

REMARKS

This application has been carefully reviewed in view of the above-referenced Office Action, and reconsideration is requested in view of the following remarks. Several minor amendments were made to correct obvious typographical errors.

Regarding the Claim Rejections under 35 U.S.C. §103

All claims have been rejected under 35 U.S.C. §103 based upon the Candelore reference of record in view of Gaydos of record. Both the present application and the Candelore patent are commonly owned. Mr. Candelore and the present inventors have worked together on several inventions related to selective encryption since at least as early as 2002.

It is noted that it is apparently only possible that the Candelore reference can be considered prior art under 35 U.S.C. §102(a) or 35 U.S.C. §102(e). Applicant submits herewith a declaration under Rule 37 C.F.R. §1.131 along with supporting documentation that antedates the publication date of the Candelore reference. This documentation establishes that the invention was made prior to the publication date of the Candelore reference and removes it from consideration as 35 U.S.C. §102(a) prior art. This documentation furthermore establishes that the present invention was made prior to the filing date of the Gaydos reference, thereby completely removing Gaydos from consideration.

It is further noted that an obviousness rejection under 35 U.S.C. §103 based upon Candelore of record as 35 U.S.C. §102(e) prior art falls within the exception of 35 U.S.C. §103(c)(1). The present application and U.S. Patent No. 7,039,938 have a common assignee. This is evidenced by the recorded assignment of the Candelore Patent application at reel / frame 013902/0553 recorded on April 1, 2003; and further by the recorded assignment of the present application at reel/frame 015609/0017 recorded on 7/27/2004. At the time of the invention of the present invention as claimed, the inventors were under obligation to make the above noted assignment. Hence, the Candelore reference also cannot be used as prior art in making the present rejection.

In view of these circumstances, it is submitted that the present application is in condition for allowance and such is respectfully requested at an early date.

The present evidence is submitted in response to the new grounds of rejection and is submitted to be timely in view of its relevance to disqualification of Gaydos, despite being submitted after final rejection.

Concluding Remarks


The undersigned additionally notes that distinctions exist between the cited art and the claims. However, in view of the disqualification of the cited art, there need be no discussion of such distinctions at this time. Failure to address each point raised in the Office Action should accordingly not be viewed as accession to the Examiner's position or an admission of any sort.

No amendment made herein was related to the statutory requirements of patentability unless expressly stated herein. No amendment made was for the purpose of narrowing the scope of any claim unless an argument has been made herein that such amendment has been made to distinguish over a particular reference or combination of references.

Interview Request

In view of this communication, all claims are now believed to be in condition for allowance and such is respectfully requested at an early date. If further matters remain to be resolved, the undersigned respectfully requests the courtesy of an interview. The undersigned can be reached at the telephone number below.

Respectfully submitted,


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